

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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INDUSTRIAL WINDOW CORP.,

Plaintiff,

Civ. No.: 07 CV 10959
(Rakoff, J.)

-against-

NOTICE OF MOTION

FEDERAL INSURANCE COMPANY,

Defendant.

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PLEASE TAKE NOTICE, that upon the accompanying affidavit of Eleftherios Kougantakis dated February 1, 2008, the exhibits annexed thereto, and the accompanying Memorandum of Law, and upon all pleadings and proceedings heretofore had herein, defendant Federal Insurance Company (“Federal”) will move this Court before the Honorable Jed S. Rakoff at the United States District Court for the Southern District of New York, New York located at the U.S. Courthouse, 500 Pearl Street, New York, New York on the 7th day of March, 2008 at 2:00 p.m. on that day or as soon thereafter as counsel may heard, for an Order pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure (“FRCP”) dismissing the complaint as against Federal upon the ground that the instant action is barred by the resolution of disputes provisions contained in the contract which is incorporated by reference in the payment bond issued by Federal; or in the alternative, converting this motion, pursuant to FRCP 12(b), to a motion for summary judgment and awarding summary judgment dismissing the complaint as against Federal.

PLEASE TAKE FURTHER NOTICE, that pursuant to Local Rule 6.1(b) of the Court, opposing papers are required to be served within ten (10) business days after the service of moving papers.

Dated: Woodbury, New York
February 1, 2008

MILBER, MAKRIS, PLOUSADIS
& SEIDEN, LLP


By: Joseph J. Cooke, Esq. (JC 6668)
Attorneys for Defendant
Federal Insurance Company
1000 Woodbury Road, Suite 402
Woodbury, New York 11797
(516) 712-4000
File No.: C0407-0002

To: Anthony P. Carlucci, Esq.
WELBY, BRADY & GREENBLATT, LLP
Attorneys for Plaintiff
Industrial Window Corp.
11 Martine Avenue, 15th Floor
White Plains, New York 10606
(914) 428-2100

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

LISA FRANZINO, sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at Seaford, New York.

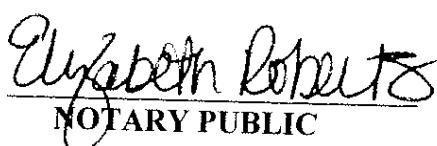
That on the 1st day of February, 2008, deponent served the within **NOTICE OF MOTION, AFFIDAVIT OF GEORGE KOUGENTAKIS IN SUPPORT OF FEDERAL'S MOTION TO DISMISS and MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S RULE 12(b)6 MOTION TO DISMISS** upon:

Anthony P. Carlucci, Esq. (AC7565)
WELBY, BRADY & GREENBLATT, LLP
Attorneys for Plaintiff
Industrial Window Corp.
11 Martine Avenue, 15th Floor
White Plains, New York 10606
(914) 428-2100

the attorney(s) for the respective parties in this action, at the above address(es) designated by said attorney(s) for that purpose by depositing same enclosed in a postpaid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office within the State of New York.


LISA FRANZINO

Sworn to before me this
1st day of February, 2008


ELIZABETH ROBERTS
NOTARY PUBLIC

ELIZABETH ROBERTS
Notary Public, State of New York
No. 01R06180429
Qualified in Suffolk County
Commission Expires January 14, 2012